IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.07.2006

CORAM

THE HON'BLE MRS.JUSTICE PRABHA SRIDEVAN

W.P. No.804 of 1999

T. Gopal .... Petitioner

vs.

1. The Forest Range Officer
Dharmapuri Range
Dharmapuri

2. The District Forest Officer and
Authorised Officer
Dharmapuri Division
Dharmapuri .... Respondent

Writ Petition filed under Article 226 of the Constitution praying this Court to issue a writ of certiorarified mandamus calling for the records in C.A. No.24 of 1995 dated 24.04.1998 on the file of the III Additional Sessions Judge, Dharmapuri at Krishnagiri, confirming the order of the second respondent in S.T.O.R. No.7/93-T dated 08.02.1995, confiscating the vehicle Swaraj Mazda, bearing Registration No.TN-57-2030.

For petitioner : Mr. K. Selvarangan

For respondents : Mr. Titus Jesudoss
Special Government Pleader (Forest)

O R D E R

The petitioner is aggrieved by the order of confiscation of his vehicle which was confirmed in appeal.

2. The vehicle belonging to the petitioner was seized for offence under Sections 21 (d) and (f), 35 and 36 of the Tamil Nadu Forest Act, 1982 for transporting 5 teak wood and 94 rosewood. The Forest Range Officer arrested one Ranganathan alleged to have travelled in the said van and the driver escaped from the van.

3. On 27.12.1993, confiscation proceedings were initiated and on 25.03.1994, the second respondent issued a show cause notice to the petitioner. The petitioner appeared before the second respondent and gave a statement that the vehicle was entrusted to his driver to collect freight charges and he has no knowledge about the transport of teak wood and rose wood. However, the first respondent proceeded to confiscate

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the van by proceedings dated 08.02.1995. The petitioner filed an appeal against the order of confiscation and the appeal was dismissed and therefore, this writ petition.

4. The learned counsel for the petitioner would submit that there is no evidence to show that the petitioner had knowledge of the illegal transport of goods and therefore, the authorities ought not to have presumed that illegal transport was done with his connivance. In support of his contention, he would rely on a decision of the Apex Court reported in JT 1997 (9) S.C. 641 in the case of Assistant Forest Conservator & Others Vs. Sharad Ramchandra Kale wherein, the Supreme Court dismissed the appeal filed by the appellant on the ground that the authorities had failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest produce.

5. Per contra, Mr. Titus Jesudoss, learned Special Government Pleader would submit that it is the duty of the petitioner to prove that the act was done without his connivance. In this connection, he would rely on an unreported judgment of a Division Bench of this Court in Writ Appeal No.1296 of 1995 dated 04.12.1995 in the case of The Deputy Conservator of Forests & Authorised Officer Vs. Ramasami & another, in which reliance was placed on Section 49-B(2) of the Tamil Nadu Forest Act, 1982 to come to a conclusion and the same is extracted as under:

"49-B Issue of show cause notice before confiscation under Section 49-A:

1. No order confiscating any scheduled or tools, ropes, chains, boats, vehicles or cattle shall be made under 49-A except after notice in writing to the person from whom it is informing him of the grounds on which it is proposed to confiscate it and considering his objections if any;

Provided that no order confiscating a motor vehicle shall be made after giving notice in writing to the registered owner thereof, if, in the opinion of the authorised officer, it is practicable to do so and considering his objections if any.

2. Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under Section 49-if the owner of the tool, rope, chain, boat vehicle or cattle proves to satisfaction of the authorised officer that it was used in carrying timber without the knowledge or connivance of the owner himself, his agent if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use."

6. In the above case, the Division Bench observed as under: (para 5)

"…In the instant case, it is not in dispute that the vehicle was seized when it was transporting illegally sandalwood. In such cases, the aforesaid

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proviso comes into operation and the burden shifts on the owner of the vehicle to prove by convincing evidence that not only he had no knowledge of or had not connived with the use of the vehicle for illegal purposes, but his agent or the person in charge of the vehicle has taken all the reasonable and necessary precautions against such use"

7. Thus, from the above, it follows that it is not enough for the owner of the vehicle to prove that the vehicle was used with his knowledge or connivance. He is further required to prove that the agent or driver, under whose possession the vehicle was kept, had taken all reasonable and necessary precaution against such usage.

8. The judgment cited by the counsel for the petitioner cannot come to his aid since in this case both the second respondent and the appellate authority were satisfied that the evidence adduced by the petitioner was not satisfactory and it would not show that he had no knowledge that his own driver had illegally used it or that in spite of the driver exercising reasonable care, the goods had been illegally transported.

9. In the case before the Division Bench, the driver was in the custody of police and the Division Bench held that, that fact, would not, in any way, prevent the petitioner from examining him or to adduce evidence to show that he had no knowledge and it was done in spite of reasonable and necessary precaution being taken. In the instant case, though the petitioner has merely stated that the driver on whom he had depended had illegally used the van for illegal purpose without his knowledge, he has not produced the driver for giving evidence nor it is his case that the driver was not available for giving evidence. The petitioner has not discharged the onus of proof cast on him by Section 49-B of the Tamil Nadu Forest Act, 1982, which is extracted above.

In view of the foregoing, I am of the view that the appellate authority, namely the III Additional Sessions Judge, Dharmapuri, has rightly dismissed the appeal and in such a view of the matter, I see no reason to interfere with the order under challenge before this Court. Accordingly, the petition is dismissed with no order as to costs.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
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Dharmapuri Range
Dharmapuri

2. The District Forest Officer and
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+ 1 CC to the Spl. Government Pleader(Forests) SR NO 30464

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